

From: Larry Brinley
To: Microsoft ATR
Date: 1/23/02 11:53am
Subject: Microsoft Settlement

Ladies/Gents:

The proposed settlement with Microsoft in this current anti-trust case is, to be brief, aggriegiously inadequate. These inadequacies include, but are not limited to the following:

1. The definintions of 'technical' terms, such as Application Programming Interface (API), Microsoft Middleware, Windows, et. al., are so narrowly targeted that they permit Microsoft's circumvention of the spirit of the proposed settlement at Microsoft's sole discretion.

Microsoft must not be allowed to determine what does and does not fall within the scope of the settlement. The continued anti-competitive behavior of Microsoft after the watered-down 1994 Consent Decree is evidence of this fact (see 2. below).

2. The proposed settlement does not address current anti-competitive practices the Microsoft (MS) employs, let alone future practices that they may devise. For example, the enterprise license agreement that MS currently uses for its MS Office applications and operating systems bases pricing for the licenses on the number of computers that could run an MS operating system, rather than the number that actually do run an MS operating system. This practice when used against Own Equipment Manufacturers (OEMs) was specifically prohibited by the 1994 Consent Decree. This pattern of behavior clearly indicates that MS will abide only by the letter of the settlement, while continuing its efforts to quash free competition in contravention of the spirit of the settlement.

3. The question of enforcement of the proposed settlement is completely open-ended. Although the settlement calls for the creation of a 'Technical Committee' with investigative powers, I see no provision for enforcement actions of any kind that the 'Technical Committee' may take.

Remember, Microsoft is guilty of violation of the Tunney Act already as a matter of law. They've already had benefit of due process and have lost the right to the presumption of innocence in this matter. The consumer should not have to wait for independent findings of fact from the courts to address ongoing misconduct. When MS chooses to violate the settlement -- and, as history indicates, they certainly WILL choose to do so -- the 'Technical Committee' should be able to impose severe and immediate fines or other penalties with impunity. Place the fines in escrow and let them accrue interest until such time as Microsoft can substantiate its innocence to a court of law. Further, all costs of enforcement should be born by Microsoft. They broke the law; we should not have to pay a cent to keep them honest in the future.

That's my \$.02. Please put some teeth in the settlement this time. Of course, you could always wait for the next heinous anti-competitive act from Microsoft. My bet is with the way the .NET initiative is shaping up, none of us will have to wait long.

Sincerely,

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